

Addressing COA Disallowances

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I. COA's Constitutional Mandate on Audit Disallowances

The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and

(d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto. *(Section 2(1), Article IX-D, 1987 Constitution)*

The Commission shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties. *(Section 2(2), Article IX-D, 1987 Constitution)*

No law shall be passed exempting any entity of the Government or its subsidiary in any guise whatever, or any investment of public funds, from the jurisdiction of the Commission on Audit. *(Section 3, Article IX-D, 1987 Constitution)*

II. Definition of Disallowance, Charge, Suspension, and AOM

Disallowance - the disapproval in audit of a transaction, either in whole or in part. The term applies to the audit of disbursements as distinguished from “charge” which applies to the audit of revenues/ receipts. *(Section 4.16, Rules and Regulations on Settlement of Accounts)*

Charge - inclusion or addition to an accountability pertaining to the assessment, appraisal or collection of revenues, receipts and other incomes such as those arising from under-appraisal, underassessment or under-collection. *(Section 4.11, Rules and Regulations on Settlement of Accounts)*

Suspension – a temporary disallowance; refers to transactions or accounts which appear illegal/improper/ irregular unless satisfactorily explained or justified by the responsible officers or until the requirements on matters raised in the course of audit are submitted or complied with. (*Section 4.27, Rules and Regulations on Settlement of Accounts*)

Audit Observation Memorandum (AOM) – a written notification to the agency head and concerned officer/s informing of deficiencies noted in the audit of accounts, operations or transactions and requiring comments thereto and/or submission of documentary and other information requirements within a reasonable period. (*Section 4.9, Rules and Regulations on Settlement of Accounts*)

Provisions in RRPC treating on Audit Disallowances

NOTICE OF DISALLOWANCE

Disallowance –disapproval in audit of a transaction, either in whole or in part; applies to the audit of disbursements.

Issuance of ND.

- Irregular, Unnecessary, Excessive, Extravagant, and Illegal
- Addressed to the agency head and the accountant

- **Served on the persons liable**
- **Contents –**
 - ✓ **transaction**
 - ✓ **amount disallowed,**
 - ✓ **laws/rules/regulations violated, and**
 - ✓ **the persons liable**
- **Signed by the Audit Team Leader and the Supervising Auditor**
- **Shall be settled within six months from date of receipt of the ND.**

NOTICE OF CHARGE

Charge – generally used in connection with the audit of revenues/receipts. It arises from under-appraisal, under-assessment, or undercollection

Proper audit charge is the difference between

- **The amount assessed/appraised and what is due the government.**
- **Amount billed and the amount due the government**
- **Amount collected and what is due the government**

Addressed to the agency head and the accountant

Served on the persons liable

Contents -

- **the transaction and amount charged,**
- **reasons for the charge,**
- **laws/rules/regulations violated; and**
- **persons liable.**

Signed by both the Audit Team Leader and the Supervising Auditor.

Shall be settled within 6 months from date of receipt of NC.

DETERMINATION OF PERSONS LIABLE

CRITERIA -

Nature of disallowance

Duties and responsibilities or obligation of officers/employees concerned

Extent of participation

Amount of damage or loss to the government.

SERVICE OF COPY OF NOTICE OF DISALLOWANCE / CHARGE

A copy of the ND/NC shall be served to each of the persons liable, by the Auditor, through

- **Personal Service**
- **Registered Mail - if personal service is not practicable**
- **Ordinary Mail - may be done if no registry service is available in the locality of either the sender or the addressee (Section 12.3, RRSA)**
- **Private Courier**

Constructive service of ND/NC

In case there are several payees, as in the case of a disallowed payroll, service to the accountant who shall be responsible for informing all payees concerned, shall constitute constructive service to all payees listed in the payroll.

PERSONAL SERVICE

- ✓ **Personal delivery to the party**
- ✓ **Leaving it in his office with his clerk or with a person having charge thereof**
- ✓ **Leaving the copy between the hours of eight in the morning and six in the evening at the party's residence, if known, with a person of sufficient age and discretion then residing therein**
 - **if no person is found in his office, or his office is not known, or he has no office**

REGISTERED MAIL

- ✓ **If personal service is not practicable**
- ✓ **Sending a copy to the**
 - **office address of the party, if known; otherwise**
 - **at his residence with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered**

Payment of filing fee

Cases requiring payment of filing fee - petition/appeal filed before an adjudicating body of the Commission

- **Appeal from audit disallowance.charge**
- **Appeal from disapproval of request for relief from accountability**
- **Money claim, except if the claimant is a government agency**
- **Request for condonation of settled claim or liability except if between government agencies**

Payment of filing fee

NATURE	AMOUNT
Appeals from notices of disallowance or charge, requests for relief from accountability, condonation, and write-off	1/10 of 1% of the amount involved, provided the total filing fee shall not exceed P20,000
Money claims and approval of sale	1/10 of 1% of the amount involved, provided the total filing fee shall not exceed P50,000 subject to certain exceptions as may be approved by the Commission Proper

Payment of filing fee

Where to pay

- **COA Central Office Cashier**
- **COA Regional Finance Office**
- **Postal Money Order**

Payment of filing fee is jurisdictional.

- **Any appeal without the required payment of filing fee will be returned to the party concerned, for compliance with such requirement.**

EFFECT OF NON-PAYMENT PAYMENT OF FILING FEE

- ✓ appeal/petition will be returned to the party concerned for compliance with such requirement (Section 5, Rule IX, RRPC);
- ✓ appeal is not perfected
- ✓ does not suspend the running of the period to appeal.
- ✓ appeal will be dismissed
- ✓ renders judgment final and executory

MOTION FOR EXTENSION OF TIME

- ✓ **Non-extendible period of 15 days**
- ✓ **Commission Secretary is authorized to evaluate requests/motions for extension of time to file pleadings.**
- ✓ **Similar authority is given to the Cluster/Regional Director for requests/motions filed before them.**

MOTION FOR EXTENSION OF TIME

- ✓ **Proper motion duly filed and served**
- ✓ **Full payment of docket fees**
- ✓ **Filed within the reglementary period to appeal**
- ✓ **Most compelling or justifiable reasons**

DECISION NO. 2015-419

December 28, 2015

It is a basic rule of remedial law that a motion for extension of time to file a pleading must be filed before the expiration of the period sought to be extended. Since the motion for extension was filed after the lapse of the prescribed period, there was no more period to extend. citing Philippine National Bank vs. Deang Marketing Corporation, G.R. No. 177931, December 8, 2008)

COA DECISION 2015-455

“parties and counsel should not assume that courts are bound to grant the time they prayed for. After all, a motion that is not acted upon in due time is deemed denied.”

III. Remedies on Audit Disallowances

APPEAL BEFORE THE DIRECTOR

Who May Appeal

An ***aggrieved party*** may appeal from the decision of the Auditor to the Director who has ***jurisdiction over the agency*** under audit, except for ND/NC of the audit team under the FAO, SAO or ICFAU, which shall be appealed directly to the Commission Proper

How appeal is taken

The appeal to the Director shall be taken by

- filing an Appeal Memorandum with the Director, copy furnished the Auditor.**
- proof of service of a copy to the Auditor shall be attached to the Appeal Memorandum.**
- proof of payment of the filing fee prescribed under the Rules shall likewise be attached to the Appeal Memorandum.**

When appeal is taken

An Appeal must be filed within six (6) months after receipt of the decision appealed from.

Interruption of Time to Appeal

The receipt by the Director of the Appeal Memorandum shall stop the running of the period to appeal which shall resume to run upon receipt by the appellant of the Director's decision.

Power of Director on Appeal

The Director may ***affirm, reverse, modify or alter*** the decision of the Auditor.

If the Director reverses, modifies or alters the decision of the Auditor

- the case shall be elevated directly to the Commission Proper for automatic review of the Directors' decision.
- The dispositive portion of the Director's decision shall categorically state that the decision is not final and is subject to **automatic review by the CP.**

Automatic Review

Director's decision subject of automatic review by the Commission Proper- one which

- **lifts/reduces a liability under a Notice of Disallowance (ND)/Notice of Charge (NC)/Auditor's decision by an amount in excess of P100,000.00**
- **excludes a person liable under the ND/NC/Auditor's decision**

Not to be promulgated or released to appellant

Where the Director's decision pertains to several NDs/NCs/Auditor's decisions, some of which are subject to automatic review and some are not, separate decisions shall be prepared, and only the decision on the disallowances/charges that are for automatic review shall be elevated to the Commission Proper. The decision which is not for automatic review shall already be promulgated by the Director;

APPEAL BEFORE THE COMMISSION PROPER (PETITION FOR REVIEW)

Who may appeal and where to appeal

The party aggrieved by a decision of the Director may appeal to the Commission Proper.

Finality of Decisions or Resolutions

A decision or resolution of the Commission upon any matter within its jurisdiction shall become final and executory after the lapse of thirty (30) days from notice of the decision or resolution.

Petition for Certiorari – Judicial Review

Any decision, order or resolution of the Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty (30) days from receipt of a copy thereof in the manner provided by law and the Rules of Court.

When the decision, order or resolution adversely affects the interest of any government agency, the appeal may be taken by the proper head of that agency.

Effect of Filing a Petition for Certiorari

The filing of a petition for certiorari shall not stay the execution of the judgment or final order sought to be reviewed, unless the Supreme Court shall direct otherwise upon such terms as it may deem just.

MOTION FOR RECONSIDERATION

FILING OF MR AND GROUNDS

May be filed within thirty (30) days from notice of the decision or resolution

Grounds for the motion

- **evidence is insufficient to justify the decision;**
- **the decision is contrary to law.**
- **raises new matters**

Only one (1) motion for reconsideration shall be entertained.

Form and Contents

- Verified**
- Shall point out specifically the findings or conclusions of the decision which are not supported by the evidence or which is contrary to law**
- Express reference to the evidence (testimonial or documentary) or the provisions of law that allegedly do not support the findings or conclusions**

Effect/Disposal of the MR

- **Suspends the running of the period to elevate the matter to the Supreme Court**
- **Within 2 days from its filing, the Commission Secretary refers the motion to the Director for Comments**
- **Commission Secretary upon receipt of the Director's comments, shall forward it so the Legal Services Sector (now the Commission Proper Adjudication Secretariat and Support Services Sector), for study and recommendation.**
- **CPASSSS drafts decision for the consideration of the Commission Proper**

Effect/Disposal of the MR

- **Decision, if the recommendation is to consider and modify the decision**
- **Resolution – upon meritorious grounds**
- **Minute Resolution – if the recommendation is to deny the motion for:**
 - **Filed out of time**
 - **Failure to raise a new matter**
 - **Failure to show sufficient ground to justify a reconsideration of the assailed decision or resolution**

	Appeal Before the Director	Appeal Before the Commission Proper
Appealed Decision	Auditor's Decision	Director's Decision
Mode of Appeal	Appeal Memorandum	Petition for Review, with certified true copy of the decision appealed from, certified true copies of references, and other supporting papers
Where to file	Office of the Director, which has jurisdiction over the agency, with proof of Service to the Auditor	Commission Secretary, with proof of Service to the Director
Jurisdictional requirement	Payment of filing fee, plus legal research fund	Payment of filing fee, plus legal research fund

	Appeal Before the Director	Appeal Before the Commission Proper
Time to appeal	Within 6 months from date of receipt of Auditor's decision	Within the time remaining of the 6 months from receipt of Director's decision
Parties	Appellant vs. Appellee	Petitioner vs. Respondent
Contents:	Concise statement of facts and issues Grounds Material dates	Concise statement of facts and issues Grounds Material dates
Order to Answer and Transmittal of Records	Issued to the Auditor by the Director, within 5 days after receipt of the Appeal Memorandum, together with the entire records of the case, including EDSE	Issued to the Director by the Commission Secretary, within 5 days from receipt of the Petition, together with the entire records of the case.

	Appeal Before the Director	Appeal Before the Commission Proper
Filing of Answer and Transmittal of Records	Within 15 days from receipt of the Order	To the Commission Secretary, within 15 days from receipt of the Order, copy furnished the Petitioner
Filing of Reply and additional pleadings or documents	Not required	Petitioner may file with the Commission Secretary, copy furnished the Director, within 15 days from receipt of Answer Additional pleadings or documents, if necessary in the proper adjudication of the case

	Appeal Before the Director	Appeal Before the Commission Proper
Filing of Reply and additional pleadings or documents		<p>Petitioner may file with the Commission Secretary, copy furnished the Director, within 15 days from receipt of Answer</p> <p>Additional pleadings or documents, if necessary in the proper adjudication of the case</p>
Period to Decide	Within 5 days after submission of complete documents	Within 60 days from the day it submitted for decision
Motion for Reconsideration	Not allowed	Only one motion.

Entry of Decision

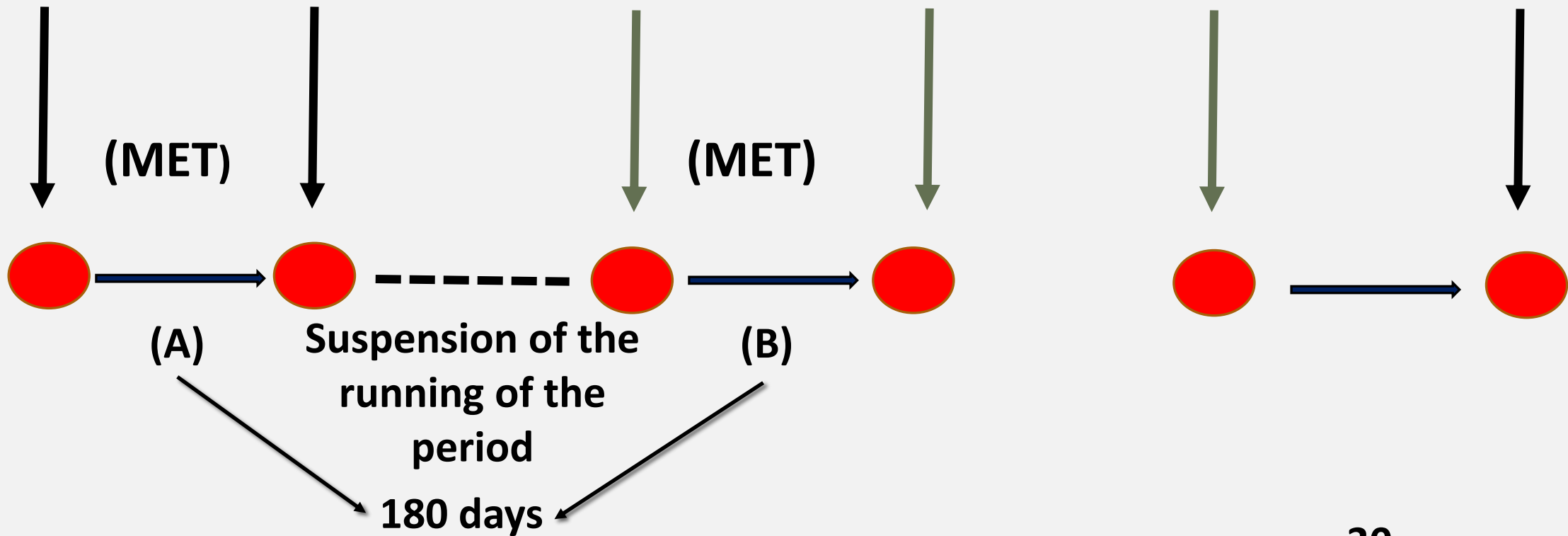
Final and executory decision - If no appeal is filed within the time provided in these rules

Entered by the Commission Secretary in the Docket which shall contain the dispositive part of the decision

Signed by the Commission Secretary with a certificate that such decision has become final and executory.

Recording of the decision shall constitute the entry.

Receipt of ND Receipt of the Appeal Memorandum Receipt of Director's Decision Receipt of the Petition for Review Receipt of CP Decision MR



MET – Motion for Extension of Time

COA Officials Authorized to Issue NFD

- Audit Team Leader and Supervising Auditor** - **For ND/NC issued by them**
- Director having supervision over the special audit team** - **For ND/NC issued by the team**
- Cluster/Regional Director** - **For Decision rendered by him**
- Commission Secretary** - **For a Decision of the Commission Proper**

Service of Notice of Finality of Decision

- ✓ **A copy of the NFD shall be served by the Auditor of the agency concerned on the persons liable or their authorized representatives who shall indicate their printed name and signature and the date of receipt thereof. (Section 22.5, RRSA)**
- ✓ **NFDs issued by the Commission Secretary on COA Decisions involving disallowances and charges are endorsed to the Auditor (ATL) with request for assistance in serving the NFD and the return of the copy of the NFD duly received by the persons liable**

COA ORDER OF EXECUTION (COE)

Definition – a written instruction to withhold payment of salary and other money due to persons liable, for settlement of their liability

Purpose - To enforce settlement of an audit disallowance/charge

Time to issue – not earlier than five (5) days from receipt of the NFD by the agency head

Form and Content

- ✓ **Addressed to the agency head, Attention: the Treasurer/Cashier**
- ✓ **Indicate the NFD**
- ✓ **Particulars of the decision being enforced**
- ✓ **The persons liable**

Monitoring the implementation of the COE

- ✓ **Report of the Auditor to the Director on the action taken by the agency on the COE**
- ✓ **Unsettled COEs shall be referred to the General Counsel for appropriate action, including referral to the Office of the Solicitor General and the Ombudsman**

IV. Decided Cases on Audit Disallowances

Silang vs COA (GR N0. 213189, Sept 8, 2015)

The City Mayor, the local sanggunian and the Officers and employees of the union who actively participated in the negotiations for the approval of the disallowed incentives are solidarily liable to refund the total disallowance

PCSO vs COA (GR 216776, Apr 19, 2016)

Only the BOD who approved the Resolution granting the disallowed benefits, and the approving officers shall refund the total amount of the disallowance.

Good faith is a state of mind denoting "honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious."

DBP vs. COA (GR 221076. March 13, 2018)

Good faith of responsible officers - Requisites

- they believed that they could disburse the disallowed amounts based on the provisions of the law; and**
- they lacked knowledge of facts or circumstances which would render the disbursements illegal when:**
 - there is no similar ruling by this Court prohibiting a particular disbursement or**
 - there is no clear and unequivocal law or administrative order barring the same.**

MWSS vs. COA. (G.R. Nos. 195105 & 220729, November 21, 2017).

MWSS Board members did not act in good faith and may be held liable for refund because they approved the said benefits even though these patently contravened R.A. No. 6758, which clearly and unequivocally stated that governing boards of the GOCC's can no longer fix compensation and allowances of their officials or employees.

